IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6924 of 2002
with
SPECIAL CIVIL APPLICATION No 6925 of 2002
with
SPECIAL CIVIL APPLICATION No 6927 of 2002
with
SPECIAL CIVIL APPLICATION No 6928 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRELI TALUKA SAHAKARI KHARID VECHAN SANGH LTD.
Versus
LAXMANBHAI KARSANBHAI SAVALIYA

Appearance:
MR BM MANGUKIYA for Petitioner No. 1
MR MUKESH A PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/10/2004

COMMON ORAL JUDGEMENT

In all these petitions under Article 227 of the

Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 7.3.2002 passed by the Gujarat State Cooperative Tribunal in Appeal Nos.77 of 2001 to 80 of 2001 by which the Tribunal has while allowing the aforesaid appeals, has quashed and set aside the judgment and award passed by the Board of Nominees in Lavad Suit Nos.87 of 1996 to 90 of 1996 and remanded the matters to the Board of Nominees to decide the suits by first deciding the application pertaining to jurisdiction given by the respondent no.1 herein and thereafter, deciding the suits according to law by giving full opportunity to both sides to be heard and to lead evidence.

2. Lavad Suit Nos.87 of 1996 to 90 of 1996 came to be filed by the petitioner against the respondents for recovery of the amount. It is the case of the petitioner that though served, nobody appeared for the respondent and even no reply was filed and therefore, the Learned Board of Nominees was constrained to pass the judgment and award exparte by judgment and award dated 16.6.2000. It appears from the record that the respondent herein original defendant submitted Misc. Application Nos.1 of 2000 to 4 of 2000 for restoration of the suits and to quash and set aside the exparte judgment and award passed by the Board of Nominees dated 16.6.2000. The Board of Nominees, Amreli by his order dated 1.1.2001 dismissed the aforesaid applications on the ground of limitation as well as the maintainability of the said applications.

3. Being aggrieved and dissatisfied with the judgment and award passed by the Board of Nominees, Amreli dated 16.6.2000 in aforesaid suits as well as he order dated 1.1.2001 passed in aforesaid applications for restoration, the respondent-original defendant preferred Appeal Nos.77 of 2001 to 80 of 2001. There as a delay in preferring the appeals also. During the pendency of the aforesaid proceedings, the recovery certificates under Section 103 of the Gujarat Cooperative Societies Act were issued which came to be challenged by the respondent original defendant before the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat and those appeals came to be allowed and the recovery certificates came to be set aside against which revision applications were filed and revision applications also came to be dismissed. Being aggrieved and dissatisfied with the said orders of setting aside the recovery certificates, the petitioner had preferred SCA Nos.2688 to 2692 of 2004. Thereafter and in the meantime, the aforesaid appeals No.77 of 2001 to 80 of 2001 came to be decided and disposed of finally by the Gujarat State

Cooperative Tribunal who by its judgment and order dated 7.3.2002 allowed the aforesaid appeal quashing and setting aside the judgment and award passed by the Board of Nominees in Lavad Suit Nos.87 to 90 of 1996 and the Tribunal remanded the aforesaid lavad suits to the Board of Nominees for deciding the same with a further direction first to decide the application pertaining to jurisdiction given by the respondent herein - original defendants and being aggrieved and dissatisfied with the same, the present petitions have been filed under Article 227 of the Constitution of India.

4. Shri B.M.Mangukiya, Learned Advocate for the petitioner original plaintiff had submitted that the judgment and order passed by the Tribunal in allowing the aforesaid appeals and remanding the matters to the Board of Nominees are absolutely illegal and contrary to the evidence on record. He has further submitted that the Tribunal has materially erred in holding that prima facie, the Board of Nominees has no jurisdiction and lave suits which were filed before the Board of Nominees under Section 96 of the Gujarat Cooperative Societies Act were not maintainable and the petitioner society ought to have resorted to proceedings under Section 93 of the Gujarat Cooperative Societies Act for the purpose of holding the original defendant liable. He has further submitted that looking to the facts and circumstances of the case, even the delay was not required to be condoned by the Gujarat State Cooperative Tribunal and that even the finding with regard to not giving adequate opportunity to the respondent herein original defendant is also contrary to the evidence on record. It is submitted that ample opportunity was given to the defendant but he did not remain present and therefore, the matter was proceeded further exparte.

5. On the other hand, Shri Mukesh Patel, Learned Advocate for the respondent - original defendant had tried to support the judgment and order passed by the Tribunal. It is submitted that on appreciation of evidence and considering the evidence of one witness on the part of the petitioner-original plaintiff and on overall consideration, the Tribunal has found that ample and adequate opportunity was not given to the respondent herein and therefore, the matters were required to be remanded. He has also further reiterated that for the purpose of fastening liability, the petitioner ought to have resorted to proceedings under Section 93 of the Gujarat Cooperative Societies Act instead of filing suit under Section 96 and therefore, the impugned judgment and order passed by the Gujarat State Cooperative Tribunal is

just and proper and is not required to be interfered with in exercise of powers under Article 227 of the Constitution of India.

6. Heard the Learned Advocates appearing for the parties.

7. It is an admitted position that the judgment and award came to be passed by the Board of Nominees, Amreli on 16.6.2000 exparte. It is also an admitted position that immediately on receipt of the judgment and award passed by the Board of Nominees, the respondent original defendant preferred the restoration applications. However, the Learned Board of Nominees rejected those applications for restoration by holding that such applications are not maintainable. Considering the evidence on record, more particularly, the evidence of one Mohanbhai Kanjibhai which was found by the Tribunal not by way of deposition but only by way of affidavit and considering the aforesaid deposition/affidavit, the Tribunal has come to the conclusion that ample and sufficient opportunity was not given to the respondent by holding the defendant liable and before fastening the liability upon the respondent and considering the aforesaid finding, if the matters are remanded for deciding the lavad suits afresh and on merits and after giving an opportunity to the respondent - original defendant, it cannot be said that there is any illegality committed by the Tribunal which requires interference of this Court exercising powers under Article 227 of the Constitution of India. However, it is also required to be considered that there was a judgment and award passed by the Board of Nominees. The respondent did not remain present before the Board of Nominees though the matters were adjourned time and again and considering the aforesaid facts, while remanding the matters to the Board of Nominees, the Tribunal ought to have imposed certain conditions with regard to deposit of the amount by the respondent - original defendant otherwise non-imposing of any condition while remanding the matters would be giving premium to a person who was negligent and who did not remain present and did not file any reply. Considering the aforesaid facts and circumstances, the judgment and order passed by the Tribunal in remanding the matters to the Board of Nominees is confirmed subject to the condition that the respondent should deposit an amount of 15% of the suit claim with the Board of Nominees without prejudice to their rights and contentions in the suits i.e. before the Board of Nominees and on deposit of such amount within a period of three months from today, the Board of Nominees is directed to decide and dispose of

the aforesaid lavad suits.

8. So far as the finding of the Tribunal with regard to filing of the suits by the petitioner - original plaintiff under Section 96 of the Gujarat Cooperative Societies Act and not initiating proceedings under Section 96 of the Gujarat Cooperative Societies Act is concerned and the direction of the Tribunal to first decide the applications pertaining to jurisdiction given by the original defendants is concerned, in view of the judgment of this Court in the case of Chhaganbhai Narottamdas Patel and anr. Vs. Gujarat Sachivalaya Employees' Co.Op. Credit Soc. Ltd. reported in 2003 (2) GLH 736, the said direction is required to be quashed and set aside. As held by this Court in the aforesaid judgement, the proceedings under Section 93 and 96 are independent proceedings and even if the proceedings under Section 96 of the Gujarat Cooperative Societies Act are not initiated, the society is not precluded from filing of the suit under Section 96 of the Act. Therefore, to that extent, the present petitions are required to be allowed, meaning thereby, the direction issued by the Tribunal in its order dated 7.3.2002 with regard to first deciding the applications pertaining to jurisdiction given by the respondent - original defendant is hereby quashed and set aside. On deposit of the aforesaid amount of 15% of the suit claim, the Board of Nominees is required to decide and dispose of the suits in accordance with law and on merits. For the reasons stated hereinabove, the petitions are partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Adinterim relief stands vacated forthwith. Direct Service is permitted.

(M.R.Shah, J)
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